

**In the United States Court of Federal Claims**  
**OFFICE OF SPECIAL MASTERS**

(E-Filed: May 4, 2007)

No. 99-406 V

NATHAN HOUSE,	)	
	)	UNPUBLISHED
	)	
Petitioner,	)	Fact testimony; Onset of
	)	symptoms; Description of
v.	)	symptoms experienced before
	)	and after hepatitis B
SECRETARY OF THE DEPARTMENT OF	)	vaccination series
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

Clifford Shoemaker, Vienna, VA, for petitioner.

Catharine Reeves, with Peter D. Keisler, Assistant Attorney General, Timothy P. Garren, Director, Mark W. Rogers, Torts Branch, Civil Division, United States Department of Justice, Washington DC, for respondent.

**RULING REGARDING ONSET OF PETITIONER'S SYMPTOMS<sup>1</sup>**

On June 28, 1999, Nathan House (petitioner) filed a petition seeking compensation pursuant to the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-10 to 34 (2000) (Vaccine Act or the Act). He alleged that he suffered injury as a result of the hepatitis B vaccinations that he received on September 9, 1993, October 22, 1993, and

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<sup>1</sup> Vaccine Rule 18(b) states that all of the decisions of the special masters will be made available to the public unless the decisions contain trade secrets or commercial or financial information that is privileged or confidential, or the decisions contain medical or similar information the disclosure of which clearly would constitute an unwarranted invasion of privacy. Within 14 days of the filing of a decision or substantive order with the Clerk of the Court, a party may identify and move for the redaction of privileged or confidential information before the document's public disclosure.

February 24, 1994. Petition (Pet.) ¶ 3. On October 5, 2006, the undersigned heard testimony from petitioner, his mother, his wife, and his sister concerning the onset of petitioner's symptoms and the nature of his symptoms.<sup>2</sup> The parties filed post-hearing briefs. The onset issue is now ripe for a ruling.

I. Witness Testimony

A. Petitioner, Nathan House

Petitioner was born on December 17, 1970. Pet. ¶ 3; Transcript of 10/5/06 Fact Hearing (Tr.) at 7. He testified during the fact hearing that he “was a very healthy child . . . [who] didn't go to doctors that much.” Id. He described himself as being “very athletic all through high school,” participating in “sports, body building, soccer, [and] wrestling.” Id.

On cross-examination, however, Mr. House acknowledged that

Yes, I had a nervous stomach as a child but that was because of my home life, what I was going through there. . . . [M]y stomach bothered me off and on when I was a child because of what I was seeing and what I was going through.

Tr. at 41. Corroborating Mr. House's testimony regarding his nervous stomach during his childhood is a notation dated July 13, 1976 in his pediatric medical records. See P's Ex. 23 at 27. The notation, in pertinent part, is as follows:

1 wk stomach upset - stomatitis ulcer pharynx  
Restless, dreams, won't eat, peculiar [with] foods  
Rx = Donnatal + Ropan<sup>3</sup>

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<sup>2</sup> Consistent with the Order of September 26, 2006, the witnesses were sequestered until called to testify. Order of 9/26/06 n.1.

<sup>3</sup> Donnatal may be prescribed as an “adjunctive therapy in the treatment of irritable bowel syndrome (irritable colon, spastic colon, mucous colitis) and acute enterocolitis.” See [http://www.donnatal.com/donnatal/pi\\_extentabs.asp](http://www.donnatal.com/donnatal/pi_extentabs.asp).

Ropan (also known as ditropan) may be used for “symptoms of overactive bladders that including sudden urges to urinate (urgency), urinary incontinence (the inability to control urination), and frequent urination.” See <http://www.rx-meds-online.com/index.php?p=drug&drugBrandId=656>.

Id.

There are no filed medical records for Mr. House between 1983 and 1990. See generally P's Exs. 1-41; see also Tr. at 60-61. Mr. House explained that because he "was healthy[, he] didn't go to the doctor that much." Tr. at 61.

Mr. House graduated from high school, attended college "for a short time, and then . . . went to a trade school." Id. at 7. After completing trade school, he began his first job in 1991, working at National Jet doing "very minute drilling with microscopic drills." Id. at 7-8. During the fact hearing, Mr. House testified that "[t]here was a tremendous amount of stress related with the job [at National Jet] because of what it entailed; [specifically,] the high priced parts [he] was drilling and the size they were. They were smaller than human hairs, and [he] had to drill them for eight hours a day." Id. at 8.

Mr. House's contemporaneous medical records allude to the stressful nature of his work at National Jet. An office visit note on October 29, 1991, prepared by Dr. Thomas Devlin, Mr. House's family physician, states that petitioner had a six month history of depression, "[n]o steroid use," "increased hostility and irritability," and periodic sleep interruption. P's Ex. 41 at 1 (transcription of Dr. Devlin's notes of petitioner's office visits between 1990 and 1994)<sup>4</sup>; Tr. at 8. Dr. Devlin also noted that petitioner was "working with [a] microscope all day." P's Ex. 41 at 1; Tr. at 8. Dr. Devlin wrote that Mr. House showed a "[d]ecrease in trust for people, competitive, wants to dominate." P's Ex. 41 at 1. Dr. Devlin prescribed Norpramin for Mr. House and encouraged him to have a psychiatric evaluation.<sup>5</sup> Id.; Tr. at 9.

Petitioner testified that as a result of Dr. Devlin's recommendations, he "went to

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<sup>4</sup> Dr. Devlin's office visit notes were originally filed as Petitioner's Exhibit (P's Ex.) 23. To assist the court and the parties in reading the content of his notes, Dr. Devlin transcribed his notes, which were filed as P's Ex. 41. For ease of reference, the undersigned cites to the exhibit containing Dr. Devlin's transcribed notes, P's Ex. 41.

<sup>5</sup> Although the drug Norpramin is misspelled in the medical records, it is clear from Dr. Devlin's subsequent prescription of desipramine, the generic form of this drug, see P's Ex. 41 at 2, that Dr. Devlin is referring to Norpramin. Mr. House referred to the prescribed drug as an 'anxiety medication,' see Tr. at 9, but Dr. Devlin's notes reflect that he prescribed Norpramin (desipramine hydrochloride) for Mr. House. P's Ex. 41 at 1. Norpramin "is a tricyclic antidepressant." [http://www.pdrhealth.com/drug\\_info/rxdrugprofiles/drugs/nor1305.shtml](http://www.pdrhealth.com/drug_info/rxdrugprofiles/drugs/nor1305.shtml). Noted side effects of this medication include: "[a]nxiety, confusion, dizziness, dry mouth, frequent urination or problems urinating, high blood pressure, hallucinations, hives, impaired coordination, irregular heartbeat, low blood pressure, numbness, rapid heartbeat, sensitivity to sunlight, sex drive changes, tingling, [and] tremors." Id.

an anger specialist counselor” who helped him address “the stress of [his] job,” “trouble [with his girlfriend] at that time,” and his “home life.” Tr. at 9-10. Mr. House explained that at home, he “had a very, very disagee[able] father, and it was hard to be raised in the same house with him.” Id. at 10.

On November 26, 1991, almost one month after Dr. Devlin prescribed antidepressant medication for petitioner, Dr. Devlin noted in petitioner’s medical records that Mr. House’s “[d]epression varies, occasionally has explosion[,] . . . sleep still interrupted every night.” P’s Ex. 41 at 2; Tr. at 10. Mr. House testified during the hearing that, after that November 1991 office visit to Dr. Devlin, he did not return to the doctor until 1993 because he “had everything under control as far as [his] anger and the medication [he] was on.”<sup>6</sup> P’s Ex. 41 at 2-3; Tr. at 10.

Mr. House “was furloughed” from the job at National Jet in April 1992, approximately one year after he began working there. Tr. at 11. After working a series of odd jobs, Mr. House began working as a youth supervisor at a boys’ camp in the spring of 1993. Id. at 11-12. In his position as a youth supervisor, he oversaw forty “drug-addicted youth from inner city gangs . . . in their daily activities.” Id. at 12. Responsible for breaking up fights between the youth, talking with the youth about their problems and administering medications to the youth, Mr. House stated that the position was “very stressful.” Id.

Petitioner’s medical records indicate that he returned to Dr. Devlin on July 20, 1993. See P’s Ex. 41 at 3. Dr. Devlin’s notes state: “Valium not strong enough. New job working at boys['] camp.” Id. As recorded in the notes of that office visit, Dr. Devlin discussed with Mr. House his “goals [and] self esteem” and noted that Mr. House was “not notably anxious.” Id. Dr. Devlin prescribed a refill of petitioner’s prescription for Valium. Id. Petitioner testified during the hearing that he filled that prescription and that he took the medication “[o]nly when . . . needed.” Tr. at 13.

Mr. House’s medical records include a notation dated August 31, 1993, almost six weeks after petitioner’s July office visit to Dr. Devlin, that petitioner’s mother telephoned Dr. Devlin’s office reporting “diarrhea from Valium.” P’s Ex. 41 at 4; Tr. at 13. Recalling the circumstances precipitating that telephone call, Mr. House explained:

I didn’t take the Valium very much, and when I did take them, one time I

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<sup>6</sup> The medical records reflect that Mr. House visited Dr. Devlin complaining of a “sore throat . . . headache, swollen gland right neck, temp of 101,” on June 2, 1992. P’s Ex. 41 at 2. Dr. Devlin ordered a throat culture and prescribed penicillin. Id.

got the diarrhea from them because I didn't take them. It lasted a day, and then it was gone. . . . I called to see if [the Valium] could cause that because I didn't have any symptoms like that before. I didn't take the Valium that much. I pretty much figured that's what did it.

Tr. at 14.

On Thursday, September 9, 1993, nine days after the telephone call to Dr. Devlin's office reporting petitioner's diarrhea, Mr. House received a hepatitis B vaccination. P's Ex. 38; Tr. at 14. Mr. House testified that "within hours" after receiving the shot, "[he] became ill. He "had chills, body aches, onset of diarrhea, cramping, and . . . just generally did not feel well." Tr. at 15. Mr. House explained that within ten hours of receiving the vaccination, he began to experience flu-like symptoms. See id. at 46-47; 51. Although he had headaches and diarrhea, he went to work for his "3-to-11 shift" because he "didn't want to lose his job." Tr. at 15. He believes that he also went to work the following day, on September 10, 1993, but he "had to be relieved because of the diarrhea." Id. at 16.

Petitioner's medical records indicate that he saw Dr. Devlin on September 11, 1993, two days after he had received his first hepatitis B vaccination. P's Ex. 41 at 4. The office visit notes state: "[R]ecently had intestinal virus. Doesn't like new job. Depressed at times. Intermittent diarrhea when under stress." Id. Dr. Devlin prescribed Zoloft for petitioner because, Mr. House explained, "[h]e thought [petitioner] might have been depressed[, and] [i]t might have been causing the diarrhea." Tr. at 17. Dr. Devlin changed petitioner's prescription from Zoloft to Donnatal, but petitioner testified that his diarrhea "got progressively worse" and that the headaches that he was experiencing were getting worse. Id. at 17-18.

On Friday, October 22, 1993, petitioner received his second hepatitis B vaccination. P's Ex 38; Tr. at 18. Mr. House testified that "on the way home from the vaccination, [he] had to stop at a restaurant to go to the bathroom." Tr. at 19. Mr. House stated that "it was probably four miles to McDonald's," the restaurant at which he stopped. Id. at 52. He added that he "also had. . . burning in [his] stomach and . . . abdomen area, and it progressively got worse along with the diarrhea." Tr. at 19; see also id. at 53. He explained that he "didn't have the burning sensation in his stomach" after his first inoculation. Id.

Mr. House went to work on the day that he received the second hepatitis B vaccination. Id. at 19. On the following Monday, October 25, 1993, Mr. House returned to Dr. Devlin complaining of stomach burning. Id. at 20; see also P's Ex. 41 at 5.

Without health insurance and told by Dr. Devlin during that office visit in October 1993, that petitioner had irritable bowel syndrome and that Dr. Devlin “really couldn’t do anything for [him],” Mr. House did not return to the doctor. Id.; but see P’s Ex. 41 at 5 (Dr. Devlin’s noted assessment of Mr. House during that visit was “[p]eptic disease.”).

Mr. House received his third hepatitis B vaccination on Wednesday, February 24, 1994, and went to work on the day that he received the shot. Id. He testified that “by the time [he] got to work, [he] was going to the bathroom so much.” Id. at 20-21. He worked his evening shift from 3 p.m. to 11 p.m. and drove home in a blizzard because he was too sick to stay at work to cover a co-worker’s shift. Id. at 21. When he called into work the next day indicating that he was too ill to come in, he was “fired.” Id. at 22.

After his termination, Mr. House remained at home “either in bed sleeping or on the floor sleeping in front of the commode.” Id. at 24. Still without health insurance and “because of the finances at the time,” id., petitioner tried “herbal . . . remedies” for his condition, id. at 25. The “remedies” did not help. Id. Mr. House testified that his condition “was getting worse and worse and worse progressively from the first [hepatitis B] shot to my second [h]epatitis shot and then to that [third hepatitis B] shot, also, the flu shot” that petitioner received on October 14, 1994.<sup>7</sup> Id. at 25; P’s Ex. 26 at 11.

Mr. House’s medical records reflect that he next contacted Dr. Devlin on July 6, 1994, a little more than four months after his third hepatitis B vaccination. Tr. at 38-39; P’s Ex. 41 at 6. The notes from petitioner’s records indicate that, at that time, he was complaining of sinus problems. Tr. at 38-39; P’s Ex. 41 at 6.

Petitioner’s medical records also show a phone call from petitioner’s mother to Dr. Devlin four months later, in November of 1994, regarding the possibility of irritable bowel syndrome in Mr. House. P’s Ex. 41 at 6. Two and half months thereafter, in February of 1995, Dr. Devlin noted that petitioner was complaining of “[a]bdominal cramps - 2-3 x/months, [that] may last for days at a time [and] [i]ntermittent diarrhea with cramps.” Id.

In February or March of 1995, petitioner first noticed blood in his stools, which “scared [him] because [he’d] never seen anything like that before, and [he] knew something else needed to be done.” Tr. at 25-26. Mr. House consulted Dr. Devlin who confirmed the presence of blood in petitioner’s stool in March of 1995 and referred

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<sup>7</sup> Although petitioner references the flu vaccination that he received on October 14, 1994, his Program claim is premised solely on his receipt of the hepatitis B vaccination series. See Pet. at ¶ 3.

petitioner to a gastroenterologist, Dr. William Mark. See id. at 26; see also P's Ex. 41 at 7. Dr. Mark performed a colonoscopy on Mr. House and determined that petitioner had proctitis.<sup>8</sup> Tr. at 28. When Mr. House failed to respond to the medications prescribed by Dr. Mark, id. at 26-27, he sought treatment from other physicians, see id. at 27, 29.

Among the doctors that petitioner saw was Dr. Andrew Stasko, one of petitioner's mother's physicians. Id. at 27. Dr. Stasko, who is a surgeon, made arrangements for petitioner to go the Cleveland Clinic for an evaluation. Id.

Mr. House recalls visiting the Cleveland Clinic in 1996 or 1997. See id. at 39. At the Cleveland Clinic, Mr. House underwent "a barrage of tests," that included bloodwork, an ileostomy,<sup>9</sup> and a colonoscopy. Id. at 27-28. The examining physicians diagnosed Mr. House with Crohn's disease and prescribed various medications, including prednisone. Id. at 28. With the exception of prednisone, Mr. House continues to take the prescribed medications. Id. at 28-29. He testified that as a result of the prednisone, he has developed Cushing's disease, he has gained weight, he has become a type 2 diabetic, he has developed intraocular pressure, and he has developed osteoporosis. Id.

On December 1, 1998, petitioner also saw Dr. Theodore Bayless, a gastroenterologist at Johns Hopkins Medical Center. Id. at 29; P's Ex. 23 at 29. Mr. House testified that Dr. Bayless advised him on how to manage his condition and on what medications to take and on how to take his medication. Id.

Mr. House's medical records include notes from Dr. Bayless regarding the history of petitioner's illness:

He had a history which sounded like irritable bowel syndrome as a child with nausea and nervous stomach, and a long, long history of irritable bowel syndrome on his mother's side. His aunt had cancer of the colon at age 71, and there is a cousin's daughter who has Crohn's disease. So, he has a family history of irritable bowel disease in that he has Crohn's, and there is colon cancer and a question of colitis in his maternal cousin and also colitis and toxic megacolon in the third generation of a second cousin, and a first cousin has Crohn's disease. So, there is a positive family history

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<sup>8</sup> Proctitis is "inflammation of the rectum." Dorland's Illustrated Medical Dictionary, at 1512 (30th ed. 2003).

<sup>9</sup> An ileostomy is a "surgical creation of an opening into the ileum," which is the "distal portion of the small intestine." Dorland's at 907.

scattered through this family.

P's Ex. 23 at 29. Dr. Bayless's clinical notes identify the source of the provided information as "notes from [petitioner], notes from Dr. Ian Lavery, [the surgeon who examined petitioner at the Cleveland Clinic,] and notes from the Cleveland Clinic." Id.

Mr. House testified that "as [he is] getting older and as this Crohn's disease goes on," foods that did not bother him previously are now bothersome. See Tr. at 63. He described the symptoms he experienced after each of his three hepatitis B vaccinations as progressively worsening abdominal cramping. See id. at 53-54. He explained that his symptoms became progressively worse due to the increased frequency of his bowel movements and the increased intensity of his abdominal pain. See id. at 56-59. Mr. House explained that because he is "a private person," he did not tell people, other than his immediate family, that he had a problem. Id. at 55.

Mr. House currently receives disability benefits from the Social Security administration. Tr. at 45. According to Mr. House, he became eligible for disability benefits in "about '97 [or] '98." Id. His primary care physician, Dr. Devlin, currently manages his medications. Id. at 29-30.

#### B. Petitioner's Wife, Melinda House

Mr. House's wife, Melinda House, testified next. Mrs. House met petitioner in 1992 and married him in March of 1998. Tr. at 66-67. She stated that when she first met petitioner, "[h]e was very outgoing [and] healthy. . . . [H]e was never sick." Id. at 68-69.

Mrs. House recalled the day that petitioner received his first hepatitis B vaccination in September of 1993 because she "had just started college . . . and we would talk on the phone a lot because we lived . . . a half an hour apart." Id. at 69. She remembers asking petitioner, after he received his shot, how he feeling, and she remembers him telling her that he "felt fevered and achy." Id. at 70. She recalls thinking that he was "getting the flu [because] [i]t was fall." Id. But, she noted that "[i]t wasn't normal flu. . . . [Rather,] it was like diarrhea every day and just not feeling right. He had headaches, just not the way you normally would heal from the flu." Id.

Mrs. House also recalled petitioner's reaction to the second vaccination in October 1993. Id. at 70-71. She stated that she and petitioner "joked" that he would probably get the flu again. Id. at 71. She testified that "he did [and] [h]e got worse." Id. She remembered that he received this shot "around Halloween time and [they] couldn't go anywhere for Halloween because he didn't feel good enough." Id. She also remembered



that he had “burning in his stomach, and . . . [that] he would call [her] from the bathroom.” Id.

Mrs. House testified that she remembered that petitioner received his third hepatitis B vaccination because “[i]t was around the time of a blizzard.” Id. at 72. Mrs. House testified that her then-boyfriend “was worried [because] [a]t work, he would have to use the restroom a lot . . . and . . . he was worried about not being able to get into work because of snow.” Id.

Mrs. House testified that “[a]fter each shot, something else happened.” Id. at 73. In an effort to assist Mr. House, she and her father did internet research for “herbal-type remedies.” Id. at 72-73, 78. But, she stated, “[N]othing, nothing helped.” Id. at 73.

#### C. Petitioner’s Mother, Cassandra House

Petitioner’s mother testified that her son “was basically a healthy child other than having several ear infections,” and a twisted ankle on which he developed a ganglion cyst. Tr. at 81. Mrs. House stated that as a teenager, her son played soccer, lifted weights, hunted deer and turkey, rode his fourwheeler, and “camped out a lot.” Id. at 81.

Mrs. House recalls that petitioner began working at National Jet after he finished high school, briefly attended college, and then went to trade school. See id. at 81. Petitioner was living at home when he began working at National Jet. Id.

Mrs. House was aware of petitioner’s visit to Dr. Devlin in October 1991 for depression and increased irritability and hostility. Id. at 82. She explained that petitioner was “under stress with the job and with a girlfriend, and he needed [medicines] to . . . help him with that.” Id. Although she acknowledged that petitioner had issues with his father while growing up, she denied that her son had any health problems with either depression or diarrhea prior to his office visit to Dr. Devlin in October 1991 for depression. Id. at 81-82.

Mrs. House did not recall any further health-related problems until July of 1993 when petitioner began working at the boys’ camp and returned to Dr. Devlin for a refill of his Valium prescription. See id. at 83-84. Mrs. House testified that petitioner “was still living at home” at that time and was working “shift work” at the boys’ camp, which Mrs. House described as a “very, very stressful” position for her son. Id. at 83-84. Again, Mrs. House denied that petitioner was having any problems with diarrhea at that time. Id. at 84.

Petitioner's medical records contain a notation on August 31, 1993 indicating that his mother called Dr. Devlin reporting petitioner's "diarrhea from Valium." P's Ex. 41 at 4. During the fact hearing, Mrs. House explained that the reported diarrhea lasted "a day and a half or so" and "probably [was] just a touch of something" because Dr. Devlin had informed her that Valium does not cause diarrhea. Id. at 84; see also P's Ex. 41 at 4.

Mrs. House remembers petitioner's receipt of his first hepatitis B vaccination on September 9, 1993. It was her practice to "wait up" for petitioner to come home after his shift ended at 11 p.m. or midnight because "he traveled a pretty good distance and he always needed to unwind and Mom was always a good ear." Id. at 85-86. She recalled that when he came home after the first vaccination, "he had an upset stomach. He was nauseated and he had diarrhea pretty bad and . . . felt like he was getting the flu again." Id. at 86. Because petitioner was still feeling badly the next day, he scheduled an appointment to see Dr. Devlin on Saturday, September 11, 1993, two days after his first vaccination. Id. at 86-87. Mrs. House recalls that at that time, Dr. Devlin suspected that petitioner had "irritable bowel." Id. at 87. Mrs. House also testified that three to five days later, petitioner began to complain of "[s]evere headaches and . . . seeing lights around him." Id. at 88; see also id. at 110.

Mrs. House recalled petitioner's receipt of the second hepatitis B vaccination on October 22, 1993. She testified that after he received that shot, "the diarrhea never went away, and then he started to get the burning feeling in his stomach." Id. at 89; see also id. at 111. Petitioner's symptoms prompted Mrs. House to schedule another doctor's appointment for her son. See id.; P's Ex. 41 at 5. During petitioner's office visit to Dr. Devlin on October 25, 1993, Dr. Devlin noted assessed petitioner's condition as "peptic disease." P's Ex. 41 at 5.

Mrs. House testified that between her son's receipt of his second and his third vaccinations, his condition "got progressively worse." Tr. at 90. Petitioner "had the diarrhea all the time[, h]e wasn't eating well. He wasn't sleeping well. He felt like he had achy bones. He just was not healthy." Id.

\_\_\_\_ Mrs. House remembered that petitioner received his third vaccination on February 24, 1994 during "a heck of a snowstorm." Id. at 90 "[H]e had to go get that shot and then go to work." Id. Mrs. House stated that when he came home after work, "he was just really sick." Id. at 91. Petitioner lost his job after that, and according to his mother, "he existed in the bathroom." Id.

According to petitioner's mother, because petitioner had no job, he had no insurance to go to the doctor or to buy prescriptions. See id. at 92. Instead, she ordered a

book on home remedies to prevent diarrhea. Id.

Petitioner did return to the doctor, however, when blood and mucous began to appear in his stools. Id. at 92. Petitioner saw Dr. Mark, a gastroenterologist, who informed petitioner that he would have to learn to live with his condition. Id. at 93; see also id. at 26. Dissatisfied with Dr. Mark's lack of "caring," Mrs. House suggested that her son consult with her surgeon, whom she "really liked." Id. at 93. Mrs. House's surgeon made arrangements for petitioner to go to the Cleveland Clinic, on financial aid, for examination. Id.

Mrs. House accompanied petitioner to the Cleveland Clinic. Id. She recalls giving "history" at the Cleveland Clinic and subsequently at John Hopkins Hospital. Id. at 94. When questioned about petitioner's personal medical history noted in his medical records, Mrs. House testified that her son had a nervous stomach, as a child, "only" when he "would get into it" with his dad. Id. at 95. When questioned about the family medical history noted in petitioner's medical records, Mrs. House testified that she "had a great-aunt[, named June,] that died from colon cancer," id. at 94, 112, and "a third cousin's daughter," named Nancy, who has Crohn's disease, id. at 96-97. Mrs. House admitted that she could not "quite remember" who provided the family history to Dr. Bayless at Johns Hopkins Hospital regarding a long family history of irritable bowel syndrome. Id. at 99-100.

Comparing petitioner's condition before his hepatitis B vaccinations to his condition after his hepatitis B vaccinations, Mrs. House stated:

[E]verybody gets loose stool. When you're younger, things upset you more. He had loose stool, but it was not diarrhea, what I know as diarrhea now, as in Crohn's diarrhea.

Id. at 104-105. Mrs. House acknowledged that she was not aware of whether her son had diarrhea as a result of his nervous stomach as a child. Id. at 109.

#### D. Petitioner's Sister, Jenean House-Fazenbaker

Petitioner's sister lived at home with petitioner through high school and until the time of his first hepatitis B vaccination. Id. at 115. She moved out of the family home in the middle of October 1993, before petitioner received his second vaccination. See id. at 115-116.

Mrs. House-Fazenbaker recalls that prior to her brother's first vaccination, he "was

very health-conscious.” Id. at 116. She explained:

[H]e could measure the percentage of body fat on his body. He lifted weights every day of his life. He was extremely conscious of everything that he ate. . . . My brother had a six-pack ab, [and] was very physically fit.

Id.

To illustrate her brother’s state of health, petitioner’s sister brought with her to the fact hearing an album of photographs, which was marked as Petitioner’s Exhibit 40. See Tr. at 116-117. Mrs. House-Fazenbaker stated that as a present to her brother for his high school graduation, she had the photographs taken “because he was so health conscious, and he looked kind of like a model at the time.” Id. at 117.

She testified that she remembered her brother’s first hepatitis B vaccination in September of 1993 because she, as an employee of the Board of Education, also received a hepatitis B vaccination around the same time. Id. at 118. Her memory, after her brother received the first hepatitis B vaccination, “is of him lying on the floor in the bathroom next to the radiator in a fetal position, cramped up with pain.” Id. at 119. She stated that what she remembered seeing “would have been very close to the time of the shot because [she] left home not long after. [She] left [home] the second week of October [1993].” Id. at 119-120.

#### E. Assessment of the Witnesses’ Testimony

Having observed the demeanor of the witnesses during their testimony, the undersigned is persuaded that each of the testifying witnesses offered as honest a recollection of the described events as is now possible. The undersigned attributes discrepancies in completeness and accuracy between the testimony of the witnesses and the filed contemporaneous medical records to the passage of time. Consistent with the Federal Circuit’s guidance in Curcuras v. Secretary of Health and Human Services, the undersigned ascribes greater weight to contemporaneous written medical records than to conflicting later recollections of testifying fact witnesses. 993 F.2d 1525, 1528 (Fed. Cir. 1993) (internal citation omitted) (“[O]ral testimony in conflict with contemporaneous documentary evidence deserves little weight.”).

#### II. Petitioner’s Pre-Vaccination Medical Records

As discussed above, the testimony of the witnesses describing Mr. House’s condition after his vaccinations finds support in his medical records. Also relevant to the

issue of the onset of petitioner's symptoms are certain notations in petitioner's medical records prior to the receipt of his hepatitis B vaccinations.

Of particular interest to the undersigned are petitioner's medical records dated January 26, 1990 and June 7, 1993. See P's Ex. 41 at 1, 3. The record on January 26, 1990, more than three and a half years before petitioner received his hepatitis B vaccination series, shows a phone call to Dr. Devlin's office reporting "vomiting, diarrhea, headache and shakes" accompanied by "weak[ness]" on the preceding day, January 25, 1990. P's Ex. 41 at 1. Dr. Devlin speculated that the symptoms were "[p]robably viral" and noted the need for "blood work next week." Id.

Over three years later but several months prior to petitioner's first hepatitis B vaccination, on June 7, 1993, Dr. Devlin noted during an office visit that petitioner described the following symptoms:

3 wks of flu . . . . Now shakes. . . . Describes attacks 10-15 min. dizziness, dry mouth, weakness, increase[d] heart rate, nausea, shakiness and sweats. One hour rarely occur, associated with vomiting and visual blurring. Having about one attack[] (like anxiety) per week.

P's Ex. 41 at 3. Dr. Devlin's assessment of petitioner's symptoms was "[p]ossible migraine and anxiety attacks." Id.

Petitioner received the first of his three hepatitis B vaccinations in September of 1993. Pet. ¶ 3.

### III. Findings of Fact

Based on the witnesses' testimony and the filed medical records, the undersigned determines that a preponderance of the evidence supports the following factual findings:

1. Petitioner had a nervous stomach as a child.
2. There is evidence of some family history involving Crohn's disease and colon cancer.
3. Prior to petitioner's receipt of the hepatitis B vaccination series, petitioner reported episodic symptoms of weakness, nausea, shakiness, vomiting, diarrhea, visual blurring and headaches.

4. Petitioner experienced symptoms of cramping and diarrhea within 12 hours of receiving his first hepatitis B vaccination on September 9, 1993, and petitioner reported these symptoms to his doctor within two days of his first hepatitis B vaccination. Petitioner experienced headaches and an “aura” of flashing lights after his first hepatitis B vaccination. The medical records indicate that he reported these symptoms to his doctor on September 28, 1993.
5. Petitioner experienced symptoms of cramping and diarrhea after receiving his second hepatitis B vaccination on October 22, 1993. Petitioner reported these symptoms to his doctor within three days of his second hepatitis B vaccination.
6. Petitioner’s reported symptoms persisted after his receipt of the third vaccination on February 24, 1994.
7. Although it is not clear to the undersigned that the intensity of petitioner’s discomfort increased after he received his hepatitis B vaccination series, the undersigned is persuaded that petitioner’s symptoms occurred more frequently after receipt of the vaccinations. The undersigned is further persuaded that petitioner first experienced stomach burning after the administration of his second hepatitis B shot.

The medical significance of the foregoing factual findings remains to be addressed by the parties’ respective experts. **On or before Friday, May 11, 2007**, the parties shall contact chambers to schedule a status conference to address further proceedings in this case.

**IT IS SO ORDERED.**

s/Patricia E. Campbell-Smith  
Patricia E. Campbell-Smith  
Special Master